



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

January 14, 2014

1401-SE-01

Exhibit 1

Petition Number: 1401-SE-01

Subject Site Address: 124 E. Main Street

Petitioner: Ronald Povinelli by Brian Ewen

Request: The petitioner is requesting approval to modify conditions of a granted Special Exception that permitted auto sales, new or used, in the Local Business – Historical District (LB-H).

Current Zoning: LB-H

Current Land Use: Un-occupied commercial structure/paved lot

Exhibits:

1. Staff Report
2. Aerial Location Map
3. 0111-SE-04 - Conditions Letter
4. Site Plan
5. Petitioners Application
6. Public Comment

Staff Reviewer: Sarah L. Reed, AICP, Associate Planner

Original Board Approval: 0111-SE-04

Petition History:

This petition will receive a public hearing at the January 14, 2014, Board of Zoning Appeals meeting.

A Special Exception for auto sales, new or used (0111-SE-04) was granted by the Board of Zoning Appeals on November 19, 2001 (the "Original Approval"). The letter of grant identifying the conditions of approval (the "Conditions Letter") for 0111-SE-04 is included as **Exhibit 3** of this Staff Report. This petition is requesting to modify the conditions of the Original Approval.

Property Location and Description:

The subject property is located at 124 East Main Street (the "Property"). The Property includes an existing general office structure that is approximately 276 square feet in size, while the remainder of the Property is paved. There is access to the Property from State Highway 32 to the south and the alley adjacent to the western boundary of the site (see **Exhibit 4**).



The Property is zoned Local Business – Historical District (LB-H) and is bounded by LB-H zoning. The Property is located within the State Highway 32 Overlay Zone (WC 16.04.065); however, the Property is located within the Downtown Westfield Exception area, and therefore the State Highway 32 Overlay Zone does not apply.

Overview:

Auto sales, new or used, service and repair (the “Use”) is permitted within the LB-H District by special exception. As a special exception, the Use is contemplated as appropriate within the LB-H District in certain circumstances. Special exception uses are of a nature that the characteristics of their operation may require special consideration with respect to their impact upon neighboring property and public facilities. The Westfield-Washington Township Zoning Ordinance has established a list of criteria for special exceptions. These criteria for are listed below in the “Procedural” section of this report (Page 6).

The Use was originally granted for the Property in 2001 (0111-SE-04) with a list of conditions (see **Exhibit 3**). If the Petitioner can meet **all** of the conditions of approval, then the operation of the Use would be permitted today.

The Department has identified the following outstanding items from the Conditions Letter.

- Condition #2: Site Access, items a. and b.;
- Condition #4: Landscaping, items c., d., e., and f.; and
- An additional tree proposed adjacent to the alley and State Highway 32.

The Petitioner is requesting the Board’s consideration to modify these conditions. Staff’s analysis and comments regarding these conditions are in the “Analysis” section of this report (Page 3).



Analysis:

Below is a summary of the conditions of the Original Approval, identified in the “Overview” section of this report, that have not been met by the Petitioner.

Items identified as “[COMPLIANT]” are conditions satisfied as of the date of this report and that currently comply with the Original Approval.

Items identified as “[NON-COMPLIANT]” are items that do not comply with the Original Approval. These items have been recommended by Staff to go before the Board for resolution.

“Staff Comments” are identified for each [NON-COMPLIANT] condition of the Original Approval providing further explanation of the request to modify the conditions set forth in the Original Approval.

Condition #2: Site Access: The petitioner shall make the following modifications to the vehicular access points to the subject site:

- a. One (1) vehicular ingress/egress shall be permitted along the south property line not to exceed 25' in width. [COMPLIANT]

The remainder of such road frontage shall be curbed (as per Town of Westfield Construction Standards) and, except for the sidewalk area, converted into grass or landscape area. [NON-COMPLIANT]

- **Staff Comments:** STAFF IS IN RECEIPT OF A NOTARIZED LETTER FROM THE PETITIONER THAT ENSURES COMPLETION OF THE CURBING ALONG STATE HIGHWAY 32 BY 01/31/2014.

- b. One (1) vehicular ingress/egress shall be permitted along the west property line not to exceed 25' in width. [COMPLIANT]

The remainder of such road frontage shall be curbed (as per Town of Westfield Construction Standards) and, if possible, converted into grass or landscape area. [NON-COMPLIANT]

- **Staff Comments:** THE PETITIONER IS WORKING WITH STAFF AND THE PUBLIC WORKS DIRECTOR FOR RESOLUTION.

- c. In redesigning the vehicular ingress/egress along the west property line, every effort shall be made to define the property line of the subject site in order to distinguish the alley right-of-way from the subject property (see Exhibit 7 of the staff report for recommended traffic circulation design). [COMPLIANT]



Condition #4: Landscaping:

- a. At least seven (7) shrubs shall be planted along the north side of the subject property between the recommended fence and the existing building. **[COMPLIANT]**
- b. At least five (5) shrubs shall be planted along the east side of the subject property between the recommended fence and the existing building. **[COMPLIANT]**
- c. The petitioner shall be required to comply with the landscaping provisions of WC 16.06.030 - Selection, Installation, and Maintenance of Plant Materials. **[NON-COMPLIANT]**

- **Staff Comments:** COMPLIANCE IS DEPENDENT UPON ITEMS #4.e. and #4.f. OF THIS SECTION. SEE STAFF COMMENT BELOW.

- d. The petitioner shall be required to comply with the landscaping provisions of WC 16.06.040 - General Landscape Design Standards. **[NON-COMPLIANT]**

- **Staff Comments:** THE RECOMMENDED SMALLER SCALE PLANTINGS AND THE USE OF PLANTER BOXES MAY NOT NECESSITATE CONSULTATION WITH A LANDSCAPE PROFESSIONAL.

- e. The petitioner shall install at least one (1) evergreen tree somewhere on the subject property in compliance with item 4(e) and (d) above. **[NON-COMPLIANT]**

- **Staff Comments:** THE PETITIONER HAS INSTALLED TWO (2) POTTED EVERGREEN SHRUBS POSITIONED ALONG THE FRONT BUILDING FACADE.

- f. The petitioner shall install at least two (2) ornamental trees on the subject site as "road frontage trees" along State Highway 32. **[NON-COMPLIANT]**

- **Staff Comments:** THE PETITIONER HAS INSTALLED TWO (2) POTTED ORNAMENTAL TREES LOCATED ON THE PROPERTY.

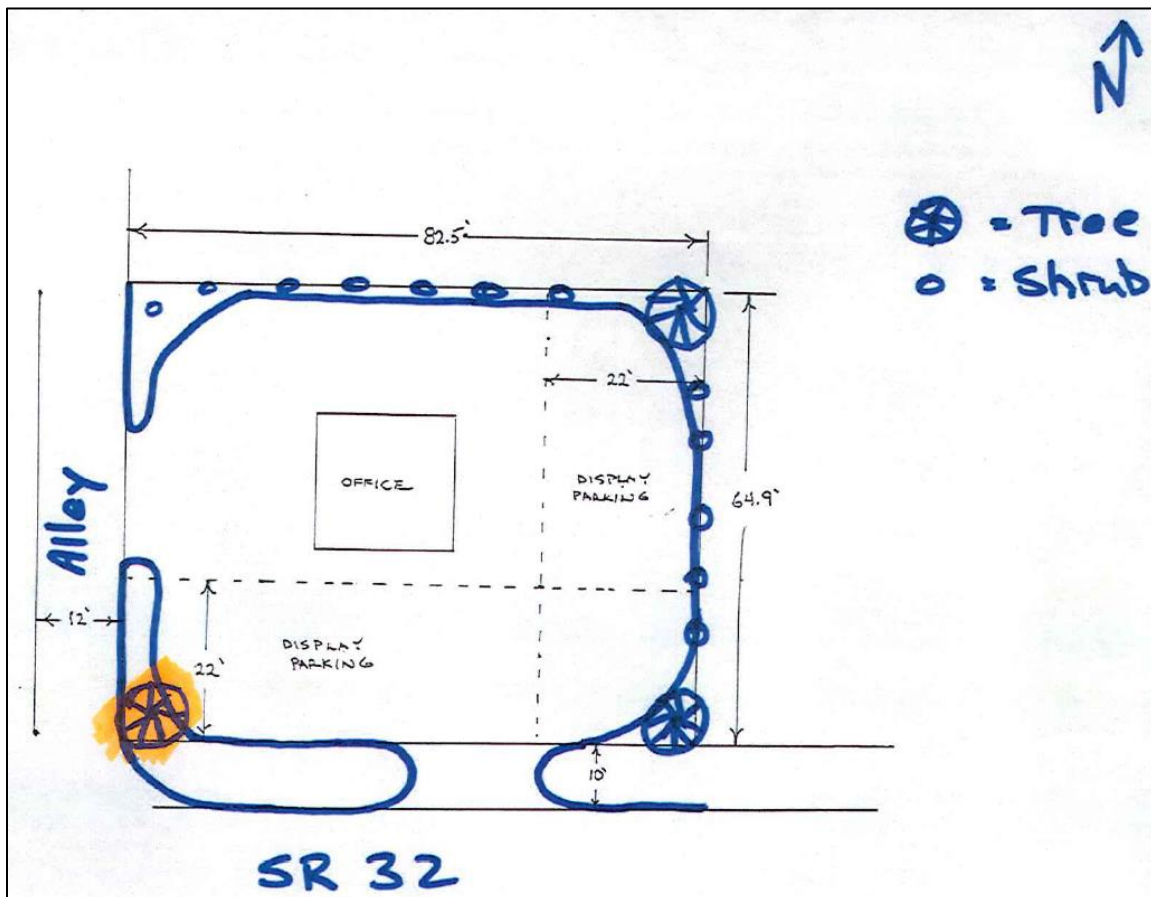
Such trees shall be at least 20' apart and shall be located adjacent to the State Highway 32 right-of-way. Such trees shall be installed in compliance with item 4(c) and (d) above. **[NON-COMPLIANT]**

- **Staff Comments:** THE ORNAMENTAL TREES ARE NOT LOCATED ADJACENT TO THE STATE HIGHWAY 32 RIGHT-OF-WAY. ROAD FRONTAGE TREES ADJACENT TO THE STATE HIGHWAY 32 RIGHT-OF-WAY COULD BE PROBLEMATIC AND CAUSE LINES OF SIGHT ISSUES FOR MOTORISTS EXITING THE ALLEY ONTO STATE HIGHWAY 32.

An additional tree proposed adjacent to the alley and State Highway 32.

The tree illustrated in Exhibit 7 of the staff report from the Original Approval (highlighted in orange on the graphic below) near the intersection of the adjacent alley [which runs along the west side of the subject property] and State Highway 32 shall be moved back away from the intersection in a manner that does not interfere with applicable line-of-sight standards. **[NON-COMPLIANT]**

- **Staff Comments:** THE TWO (2) TREES IDENTIFIED IN EXHIBIT 7 [MENTIONED ABOVE] SHOULD BE REPLACED WITH PLANTER BOXES OR SHORTER GROUND COVER THAT INCLUDES SEASONAL PLANTINGS TO PROTECT THE LINES OF SIGHT.





Procedural

Pursuant to WC 16.04.140, the Board may approve a Special Exception if it finds that:

1. *The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare;*

Finding: It is unlikely that the establishment, maintenance or operation of the request would be detrimental to or endanger the public health, safety, morals or general welfare of the community. It is not anticipated that the Use will generate a great amount of vehicular traffic and it will be located within an existing commercial district. The office portion of the business will be conducted within an existing structure, and the vehicular display area will be located on an existing paved surface on the remainder of the lot.

2. *The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, no substantially diminish and impair property value within the neighborhood;*

Finding: It is unlikely that the proposed special exception would be injurious to the use and enjoyment of other permitted uses in the immediate vicinity. It is also unlikely that the submitted proposal for the requested special exception would substantially diminish or impair property values within the commercial district. The surrounding properties are also commercial in nature and it is likely that a new business and increased activity on an un-occupied commercial lot downtown would have a positive impact on the neighborhood. Additionally, any feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. *The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property uses permitted in the district;*

Finding: It is unlikely that the establishment of the requested special exception would impede the normal and orderly development and improvement of surrounding property for uses permitted in the district. There is an existing fence along the north and east property lines of the Property provide screening from the nearest commercial structures. The west property line is adjacent to an alley and the south property line is adjacent to State Highway 32.

4. *Adequate utilities, streets, drainage and other necessary facilities have been or are being provided;*

Finding: The office portion of the business will be conducted within an existing structure, and the vehicular display area will be located on an existing paved surface on the remainder of the lot. No changes to the site are required for the operation of the proposed Use.



5. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion; and

Finding: The conditions of approval for 0111-SE-04 included a section on Site Access (see Condition #2 on Page 3). In order to obtain compliance with the conditions, the Petitioner has defined one ingress/egress of twenty-five (25) feet on State Highway 32 and one ingress/egress of twenty-five (25) feet on the alley. The Petitioner will also be installing curbing along the remaining frontage on State Highway 32 to meet the condition of approval set forth in 0111-SE-04. The Petitioner is seeking relief from the condition to curb the alley frontage, and has defined the property line on the west with posts and chain.

6. The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met.

Finding: Auto sales, new or used, service and repair is a permitted use in the LB-H District by special exception. The Petitioner is compliant with all previous conditions set forth with the approval of 0111-SE-04 except the items identified for modification within this Staff Report for 1401-SE-01.

Recommendation

Staff recommends a motion to repeal 0111-SE-04 (the Original Approval) and approve 1401-SE-01 with the following conditions:

1. No more than twelve (12) automobiles shall be displayed on the Property at any one time;
2. At least two (2) off-street parking spaces shall be provided on the Property, in addition to the display of automobiles;
3. At least two (2) potted ornamental trees shall be located on the Property;
4. At least two (2) potted evergreen shrubs shall be located between the front façade of the existing structure and the State Highway 32 right-of-way line;
5. The remaining road frontage along State Highway 32 shall be curbed to match the existing curb in that area; **AND**
6. Two (2) planter boxes OR ground cover that includes seasonal plantings shall be located adjacent to the State Highway 32 right-of-way, and shall meet the City's standards for lines of sight.
7. That the Petitioner records an Acknowledgement of Variance with the Hamilton County Recorder's Office and returns a copy of the recorded instrument to the Economic and Community Development Department prior to the issuance of a building permit for the Property.